COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts	D.T.E. 01-31-Phase I

July 19, 2001

HEARING OFFICER RULING ON VERIZON MASSACHUSETTS' MOTION FOR CONFIDENTIAL TREATMENT

I. INTRODUCTION

On June 13, 2001, Verizon Massachusetts ("VZ–MA") filed with the Department of Telecommunications and Energy ("Department") a Motion for Confidential Treatment ("Motion"). VZ–MA seeks protective treatment for a portion of its response to an information request from the Department, DTE-VZ-2-9. This request asks that VZ–MA provide documentation in support of statements in VZ–MA's direct testimony regarding the extent of competition in the Massachusetts resale market. The attachment to VZ–MA's response identifies, on a central office basis, the number of VZ–MA retail business lines, the number of resold business lines, and the percentage of resold lines to VZ–MA's business lines. In addition, VZ–MA's response identifies the resellers that have installed lines as of January 2001. VZ–MA has requested confidential protection for only the information in the attachment that identifies the number of VZ–MA retail business lines and the number of resold business lines on an exchange basis. VZ–MA has provided the entire response to requesting parties in this proceeding subject to a protective agreement. No party filed an objection to VZ–MA's Motion.

II. VZ–MA'S POSITION

In its Motion, VZ–MA requests that the Department provide confidential treatment to certain information provided by VZ–MA in response to information request DTE-VZ-2-9 (Motion at 1). VZ–MA states that public disclosure of this information could allow competitors of VZ–MA to frustrate VZ–MA's and resellers' efforts in the competitive market (id.). VZ–MA states that the information is not published elsewhere or is otherwise publicly available, and that VZ–MA regularly seeks to prevent the dissemination of this information in the course of its business (id. at 2-3). VZ–MA states that public disclosure of this information would be of value to other providers in developing competing market strategies and would undermine VZ–MA's ability to compete with carriers not subject to equal scrutiny (id. at 3).

III. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

> The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data, regardless of physical form or characteristics, received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, confidential, competitively sensitive or other proprietary information"; second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113 at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party's Limited Liability Company Agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); see also Standard of Review for Electric Contracts, D.P.U. 96-39 at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the

customer"); Colonial Gas Company, D.P.U. 96-18 at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not been and will not be granted automatically by the Department. A party's willingness to enter into a non-disclosure agreement does not resolve the question of whether the response should be granted protective treatment. Boston Electric Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

IV. ANALYSIS AND FINDINGS

VZ–MA asserts the need for confidential treatment of the information requested in DTE-VZ-2-9 concerning the number of VZ–MA retail business lines and the number of resold business lines. The hearing officer has applied the three-part standard contained in G.L. c. 25, § 5D, for determining whether, and to what extent, Verizon's response may be protected from public disclosure. For the reasons discussed below, the hearing officer concludes that Verizon has failed to meet the second part of the standard, i.e., that Verizon has failed to prove the need for non-disclosure.

In its Motion, Verizon provides only conclusory statements that public disclosure of the number of Verizon retail business lines and resold business lines on an exchange basis could be used by competitors to Verizon's and the resellers' competitive disadvantage. Verizon does not explain how competitors would or could use this information if made available to the public (as opposed to competitors subject to a protective agreement), nor does Verizon explain how use of this information by competitors, if so used, would affect Verizon's or the resellers' competitive positions. Verizon and the parties are reminded that the Department is not required to find a compelling need for public disclosure, rather the proponent of a request for confidential treatment has the burden to prove why confidential treatment is warranted. As the Department stated in the MediaOne Reconsideration Order, "[a]lthough the Department does not seek to put parties at a competitive disadvantage by disclosing information that is truly competitively sensitive, we are constrained by the statute *requiring* public disclosure absent the proper showing of compliance with the statute." D.T.E. 99-42/43, 99-52, at 52 n.31 (2000) (emphasis added). Because Verizon has failed to prove the need for non-disclosure in its Motion, the statutory standard for protective treatment has not been met, and Verizon's Motion must be denied.

V. RULING

VZ–MA's Motion is denied.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Date: July 19, 2001 _____/s/_____
Paula Foley, Hearing Officer